



RIGHTS STUFF

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EEOC Issues Best Practices Guidelines On Work/Family Balance

In April, 2009, the U.S. Equal Employment Opportunity Commission (EEOC) issued a document on best practices to avoid discriminating against workers with care-giving responsibilities. The document is available on-line at www.eeoc/policy/docs/caregiver-best-practices.html.

Being a caregiver, whether you're caring for your children, your parents, your spouse or your domestic partner, is not a "protected category" for purposes of fair employment laws. But often treating caregivers badly can raise issues of sex or disability discrimination and may have Family and Medical Leave Act implications as well. And if you treat caregivers badly, you may end up depriving yourself of valuable contributions from employees and potential employees, not to mention hurting morale at your workplace.

In the EEOC press release, Heather Boushey, senior economist for the Center for American Progress Action Fund, said that "The poor economy and lack of job creation means that families will need to ensure that they do what they can to keep parents working. The impact of family responsibility discrimination on family well-being is potentially more devastating than ever before." She noted that men have lost four out of five jobs during the current recession, leaving working mothers as the sole breadwinner for many families. She said "Families will increasingly rely on women's earnings, which are typically lower than men's and are less likely to come with health insurance."

Some suggestions from the EEOC document:

- Ensure that managers at all levels are aware of, and comply with, the organization's work-life policies.
- Respond to complaints of discrimination against caregivers efficiently and effectively, just as you should do with all complaints of discrimination.
- Protect employees from retaliation for complaining about how caregivers are treated, just as you should do with all complaints of discrimination.
- Focus on the applicant's qualifications for the job in question. Don't assume that an applicant who takes care of small children or an ailing parent will not be able to work late or travel.
- Make sure that employment decisions are well-documented and transparent.
- Consider reviewing workplace policies that limit employee flexibility, such as fixed hours of work and mandatory overtime, to make sure they are necessary to the operations of your business.
- Consider implementing flexible policies, such as flextime, telecommuting, part-time work and job sharing, if you can do so given the nature of your business.
- Consider establishing leave donation banks that allow employees to voluntarily contribute their unused leave to co-workers. Some employers have "use or lose" leave policies which prohibit employees from accruing and retaining large amounts of leave. Leave donation banks help keep that leave from going to waste and help foster an atmosphere of collegiality and cooperation. ♦

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Nordstrom Agrees To Pay \$292,500 To Settle Harassment Suit

Ten former employees of Nordstrom sued the department store for harassment. According to the lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), Nordstrom employed an alterations department manager who said that she "hated Hispanics" and that Hispanics were "lazy" and "ignorant." She chastised Hispanic tailors when they spoke to each other in Spanish. She also made derogatory comments about African Americans, saying "I don't like blacks" and "you're black, you stink."

The employees said they complained to Nordstrom's management, but the harassment continued. After they complained, the manager continued to make racially offensive comments, unfairly

berated employees and cited them for alleged performance problems.

Nordstrom agreed to pay \$292,500 in damages to the former employees, to distribute its harassment policy to all employees in the affected stores, to post a notice on the resolution of the lawsuit and to submit reports to the EEOC about harassment complaints for the next two years.

The EEOC Regional Attorney, Nora E. Curtin, said in the EEOC's press release, "Employers must act swiftly to correct harassment and prevent abusive conduct. Instead of dealing with the despicable racial and ethnic comments, Nordstrom management allowed the harasser to retaliate against the employees for complaining."

Nordstrom's spokeswoman, Brooke White, said that the store had conducted an internal investigation and found no evidence of employee harassment. The manager accused of discrimination and retaliation still works for the company. Ms. White said, "It was more inexpensive for us to settle than to continue. The EEOC even acknowledges that Nordstrom has a very good anti-discrimination policy in place and good ways of enforcing it."

If you have questions about your rights and responsibilities as an employer or as an employee, please contact the BHRC. ♦

Supreme Court To Decide Testing Case

New Haven, Connecticut had eight openings for lieutenant in its fire department and seven openings for captain. Forty-one people took the test for a captain's position; 22 passed. Seventy-seven took the test for a lieutenant's position; 34 passed.

Twenty-seven of the applicants were African American. While many of them passed the tests, they did not score high enough to qualify under civil service rules for the 15 available promotions. All but one of the applicants who scored high enough on the test for a promotion were white; one Latino applicant scored high enough as well. To avoid promoting only white and Latino employees, New Haven threw out the test results. They

wanted to avoid being sued by the African American applicants under a disparate impact theory.

Not surprisingly, when New Haven threw out the test results, the white and Latino applicants sued, saying the City had illegally used race as a determining factor in its decision-making process. This type of suit is sometimes called a reverse discrimination suit, but it's truly just a suit alleging that the employer illegally used race in its employment decision.

One of the white employees who did well on the test and who is suing has dyslexia. He said he paid \$1000 for study materials and to have the materials converted to

audio recordings to help him study.

He spent hours studying each day. He got a high score on the test but given the City's decision, did not get a promotion.

The City's lawyer, in defending the City against the lawsuit, said the test results "reflected a severe disparate impact" against African American applicants. He said that the civil service board had additional evidence that the tests had not in fact identified the most qualified candidates.

The case is now pending before the U.S. Supreme Court. ♦



Two Public Accommodation Cases Settled In Indy

The May 7, 2009, issue of the Indianapolis Star featured two stories about settlements of cases alleging discrimination in public accommodations.

Nearly a dozen African American, Asian and Latino customers filed a federal lawsuit against Chuck E. Cheese's in Castleton. They said they were treated badly by a former manager, alleging that he had used racial slurs, exhibited rude behavior and argued over a broken toy prize. The lawsuit said that in January, the manager denied several adults and children seating, or forced them to eat while standing, despite the fact that there were about a dozen empty booths at the time. One of the plaintiffs said that he had returned to the restaurant

to try to exchange a broken prize. An argument followed in which the manager used racial slurs and told the man to "go back to China."

The plaintiffs sought five million dollars, claiming violation of civil rights, false imprisonment, infliction of emotional distress and negligent hiring. The terms of the settlement were not disclosed.

The second case involved two Hoosiers who ate at a McDonald's in Louisville. According to the Star story, after the customers ordered their food, an employee used a racial slur while talking to another employee. The customers overheard this comment and asked to speak to a manager. This prompted the employee to use the slur again and to make other insulting comments.

After the complaint was filed, civil rights groups protested outside of the restaurant.

The plaintiffs asked for \$28 as a refund for their meals, but McDonald's offered them a larger settlement, paying each man \$2,000 and instituting diversity training.

Business owners need to remember that they are responsible for what their employees do. Employees need to remember that if they treat customers badly, they will suffer penalties. If you have questions about your rights and responsibilities under the Bloomington Human Rights Ordinance, please contact the BHRC. ♦

Plaintiffs Win Sexual Harassment Suit

A Phoenix glass company, Sunfire Glass, Inc., will have to pay \$267,000 to resolve a complaint of sex discrimination.

According to the lawsuit, which was filed by the Equal Employment Opportunity Commission (EEOC), the owner of the company, Paul McBride, repeatedly harassed two female glassblowers. He touched them on their breasts and between their legs and hit them on their buttocks. He made obscene gestures, verbally harassed them about their bodies and used vulgar language. The Court found that he touched the women when they were working with hot glass and thus were unable to defend themselves against his advances. The two women complained to manage-

ment, who perhaps not surprisingly took no action against the president of the company.

The Court's damage order said that one plaintiff was entitled to \$160,287 in damages, including \$60,287 for back pay and prejudgment interest, \$50,000 for compensatory damages and \$50,000 in punitive damages. The other plaintiff was awarded \$106,781, including \$6,781 for back pay and prejudgment interest, \$50,000 in compensatory damages and \$50,000 in punitive damages.

The Court awarded the EEOC injunctive relief. Under the Court's order, Sunfire is enjoined from engaging in sex discrimination in the future. The company must train employees on sexual

harassment, must post notices about sex discrimination and must create anti-discrimination policies and procedures.

Chester V. Bailey, EEOC Phoenix district director, said "The conduct at issue in this case was deplorable. The fact that the owner of the company was the harasser left the women in a difficult situation. Fortunately, these victims bravely stepped forward to report Mr. McBride's conduct and have it addressed."

If you have questions about fair employment practices, please contact the BHRC. ♦